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9 UNITED STATES DISTRICT COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA
12
13 SAN FRANCISCO DIVISION

14 GOOGLE LLC,

15 Plaintiff,

16 vs.

17 SONOS, INC.,

18 Defendant.

Case No. 3:20-cv-06754 WHA
Related to Case No. 4:21-07559

**APPOINTMENT OF COMMISSIONERS
UNDER THE HAGUE CONVENTION AND
REQUEST FOR JUDICIAL ASSISTANCE**

Referral: Hon. Donna M. Ryu, USMJ

**APPOINTMENT OF COMMISSIONERS UNDER THE HAGUE CONVENTION
AND REQUEST FOR JUDICIAL ASSISTANCE – PERMISSION TO TAKE EVIDENCE
BY A COMMISSIONER UNDER ARTICLE 17 HAGUE EVIDENCE CONVENTION 1970
TO THE CANTONAL COURT OF ZÜRICH, COURT ADMINISTRATION,
INTERNATIONAL JUDICIAL ASSISTANCE, FOR THE REQUEST FOR JUDICIAL
ASSISTANCE IN CIVIL MATTERS WITH COPY TO THE FEDERAL OFFICE OF
JUSTICE (FOJ), CENTRAL AUTHORITY FOR THE REQUEST FOR JUDICIAL
ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS:**

The United States District Court for the Northern District of California, located at the Oakland Courthouse, Courtroom 4 – 3rd Floor, 1301 Clay Street, Oakland, CA 94612, presents its compliments to the Federal Office of Justice and has the honor of requesting its assistance in obtaining evidence to be used in a civil proceeding now pending before this Court in the above-captioned matter, specifically by permitting commissioners appointed by this Court to take evidence under Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”).

It appears to this Court that Mr. Janos Levai, whose professional address is: Brandschenkestrasse 110, 8002 Zürich, Switzerland, is a witness in this action and therefore has evidence relevant to this action. It is necessary for the purposes of justice and for the due determination of the matters in question between the parties that Mr. Levai be examined (remotely) at the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland or another nearby office if additional space is required, under oath or affirmation. Given that the deposition would take place (remotely) in the canton of Zurich, Switzerland, the competent authority for the granting of this request is the High Court of the Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich 1, Switzerland. As is customary, a copy of the present Letter of Request is sent to the Federal Office of Justice, Central Authority for the Request for Judicial Assistance in Civil and Commercial Matters, Bundesrain 20, 3003 Bern, Switzerland.

This Court, therefore, respectfully requests your assistance pursuant to the Hague Convention in obtaining the oral deposition testimony of Mr. Janos Levai under the terms set forth in this Letter of Request:

1 **I. SUMMARY OF ACTION**

2 1. The above-captioned actions are properly under the jurisdiction of and are now
 3 pending before the United States District Court for the Northern District of California, Oakland
 4 Courthouse, Courtroom 4 – 3rd Floor, 1301 Clay Street, Oakland, CA 94612, United States of
 5 America. The United States District Court for the Northern District of California is fully sanctioned
 6 as a court of law and equity and is authorized by Rule 28(b) of the Federal Rules of Civil Procedure
 7 to direct the taking of evidence abroad by Letters of Request.
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9 2. The parties to the civil action pending in the United States District Court for the
 10 Northern District of California are as follows:

11 a. Google LLC (hereinafter, “Google”) is a corporation organized and existing under
 12 the laws of the State of Delaware, with its headquarters in California, USA. Witness
 13 Janos Levai is an individual who is employed by Google as a Software Engineer but
 14 is a resident of Switzerland. Google is represented by QUINN EMANUEL
 15 URQUHART & SULLIVAN, LLP, 50 California Street, 22nd Floor San Francisco,
 16 CA 94111, USA.

17 Correspondence to Google can be faxed to its representatives at +1 (415) 875-6700
 18 or emailed at the following email addresses: charlesverhoeven@quinnemanuel.com,
 19 melissabaily@quinnemanuel.com, lindsaycooper@quinnemanuel.com,
 20 marckaplan@quinnemanuel.com, and qe-sonos3@quinnemanuel.com.

21 b. Sonos, Inc. (hereinafter “Sonos”) is a corporation organized and existing under the
 22 laws of Delaware, with headquarters in California, USA. Plaintiffs are represented
 23 by ORRICK, HERRINGTON & SUTCLIFFE LLP, The Orrick Building, 405
 24 Howard Street, San Francisco, CA 94105; and LEE SULLIVAN SHEA & SMITH
 25 LLP, 656 W. Randolph Street, Floor 5W, Chicago, IL 60661, USA.
 26

27 Correspondence to Sonos can be faxed to its representatives at +1 (415) 773-5759
 28 and +1 (312) 754-9603 or emailed at the following email addresses:

1 smith@ls3ip.com, boyea@ls3ip.com, pak@ls3ip.com, and Sonos-NDCA-06754-
 2 service@orrick.com.

3 3. These above-captioned actions are two cases regarding speaker technology that have
 4 been related by the Court. Sonos has sued Google for infringement of U.S. Patent Nos. 9,967,615
 5 (“the ’615 patent”); 10,779,033 (“the ’033 patent”); 10,469,966 (“the ’966 patent”); and 10,848,885
 6 (“the ’885 patent”) (collectively, the “Patents-in-Suit”) under the patent laws of the United States,
 7 35 U.S.C. § 1 *et. seq.* Google filed a declaratory judgment action for non-infringement of the
 8 Patents-in-Suit under the Declaratory Judgment Act, 8 U.S.C. § 2201 and the patent laws of the
 9 United States, 35 U.S.C. §§ 1-390, as well as claims against Sonos for breach of contract and
 10 conversion. Both Sonos and Google believe all respective claims against them should be dismissed.

11
 12 4. Sonos notified Google of its intention to depose Mr. Janos Levai on or about March
 13 15, 2022. The parties have agreed to conduct a remote deposition of Mr. Janos Levai, who will be
 14 located for such deposition in Switzerland, in accordance with Chapter II of the Hague Convention.

15 **II. EVIDENCE REQUESTED**

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 17 5. The parties have satisfied this Court that Mr. Janos Levai has material information
 18 related to this pending action for use at trial, and that justice cannot be completely done between the
 19 parties without his testimony.

20 6. The parties requested that this Court issue the present Letter of Request seeking your
 21 assistance in obtaining testimony from Mr. Janos Levai. The evidence to be obtained is oral
 22 testimony to be taken in Switzerland, and is intended to be used as evidence in the trial for this
 23 matter. Mr. Janos Levai, who is a resident of Switzerland, has been apprised of his rights under
 24 Swiss law and has consented to being deposed in Switzerland.

25
 26 7. The Court requests assistance in permitting the commissioners appointed by this
 27 Court to take testimony from Mr. Janos Levai, which will be given voluntarily. The topics of
 28 examination may include, but are not limited to:

- a. Mr. Janos Levai's role and duties as an employee of Google.
- b. Knowledge of the YouTube Remote application.
- c. Knowledge of documents related to and produced in this matter.
- d. Any topic for which Mr. Janos Levai is designated by Google pursuant to Federal Rule of Civil Procedure 30(b)(6).

8. This Court is satisfied that the testamentary evidence is relevant to the pending proceeding and is likely to be used at trial to assist this Court in resolving the dispute presented in the civil action before it. With the approval of this Court, the parties and this Court therefore seek permission to have commissioners take this testamentary evidence for the purpose of using such evidence at trial.

9. It is requested that the testamentary evidence be given in the English language, and on oath or affirmation. It is also hereby requested that the testimony be in the form of a recorded remote deposition testimony via a secure session using videoconferencing technology upon questions communicated to the witness by U.S. counsel of the parties, acting as commissioners. It is requested that the testamentary evidence be given at some time agreeable to all involved in April or May 2022.

10. The parties have agreed on and the Court hereby appoints Mr. Olivier Buff to serve as commissioner ("the Swiss Commissioner"). Mr. Buff is a lawyer with the law firm Quinn Emanuel at Dufourstrasse 29, 8008 Zürich, Switzerland, and admitted to practice as an attorney in Switzerland and New York. In his capacity as commissioner, Mr. Olivier Buff will complete and oversee the following tasks: liaise with the Swiss authorities, including dispatch/submission of the present Letter of Request to the High Court of the Canton of Zürich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zürich1, Switzerland, and of a copy of the same to the Federal Office of Justice, Central Authority for the Request for Judicial Assistance in Civil and

1 Commercial Matters, Bundesrain 20, 3003 Bern, Switzerland; act as an agent of service for any
2 communication of the High Court of the Canton of Zürich and/or the Federal Office of Justice to
3 this Court, the parties and Mr. Janos Levai; invite Mr. Janos Levai to the deposition once
4 authorization is granted; verify and confirm the identity of Mr. Janos Levai before testamentary
5 evidence is taken; supervise the testimony of Mr. Janos Levai by remote videoconferencing software
6 from the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zürich, Switzerland (or another
7 nearby office if additional space is required); instruct the witness on his rights and obligations as
8 per Article 21 of the Hague Convention; and ensure that the testimony is conducted in accordance
9 with those rights and obligations.
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11 11. The U.S. counsel of the parties, which the Court upon request of the parties hereby
12 also appoints as commissioners are the following:
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- 14 a. For Google: Lindsay Cooper and Nima Hefazi, from QUINN EMANUEL
15 URQUHART & SULLIVAN LLP at 50 California, 22nd Floor, San Francisco, CA
16 94111, USA and 865 S. Figueroa Avenue, 10th Floor, Los Angeles, CA 90017, USA.
17 b. For Sonos: Dan Smith, Michael Boyea, and Jae Pak from LEE SULLIVAN SHEA
18 & SMITH LLP at 656 W. Randolph Street, Suite 5W, Chicago, IL 60661.
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20 12. In addition to the U.S. counsel and commissioners listed above and of the Swiss
21 Commissioner, it is also requested that client representatives for each party be allowed to be present,
22 and that a videographer and a stenographer be present to take and record a verbatim transcript of all
23 testimony and proceedings in the English language and that the transcript of the testimony be
24 authenticated. When necessary, persons belonging to the information technology departments of
25 the law firms of U.S. counsel may enter the rooms where U.S. counsel are remotely attending the
26 deposition. U.S. counsel, the party representatives, the videographer, and the stenographer may
27 attend the deposition remotely. The Swiss Commissioner, Mr. Janos Levai and potentially any of
28

1 the appointed other commissioners will attend the deposition by videoconference from the same
2 location in Zürich. When necessary, persons belonging to the IT department of the Quinn Emanuel
3 law firm where the deposition is held may enter the room where Mr. Janos Levai is remotely
4 attending the deposition.

5
6 13. As mentioned, it is requested that the commissioners take Mr. Janos Levai testimony
7 in the English language (to which Mr. Levai has agreed) under oath or affirmation, and that the
8 Swiss Commissioner be allowed to administer such oath or request for affirmation on Mr. Janos
9 Levai in accordance with United States law, as follows: “Do you swear or affirm that the testimony
10 you are about to provide is the truth, the whole truth, and nothing but the truth?”

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12 14. It is also requested that after giving testimony, Mr. Janos Levai be allowed after
13 completion of the transcript to review, submit any errata, and sign the transcript of his testimony,
14 and that the signed, transcribed, and videotaped testimony together with any documents marked as
15 exhibits be transmitted to the parties’ U.S. counsel as soon as possible thereafter.

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17 15. Accordingly, it is hereby requested that you grant assistance and authorize the Swiss
18 and U.S. commissioners appointed above to question Mr. Janos Levai under oath or affirmation at
19 the remote deposition at a date that works for all involved in April or May 2022, or at another time
20 determined by you, and that a verbatim transcript and videotape be prepared and be transmitted to
21 the parties’ U.S. counsel for submission and use before this Court.

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23 16. It is also requested that you inform the Swiss Commissioner, this Court, and the
24 parties through their above-mentioned U.S. counsel of your approval of this Court’s request and of
25 all relevant dates and times determined by you for the production of the aforementioned requested
26 testamentary evidence of Mr. Janos Levai. This Court and U.S. counsel hereby appoint Mr. Olivier
27 Buff to file the necessary application for authorization with you and act as the agent of service in
28 Switzerland for any and all communication from you in this respect. As mentioned above, Mr.

1 Olivier Buff's professional address in Switzerland for purpose of your communications is:
2 Dufourstrasse 29, 8008 Zurich, Switzerland.

3 17. This Court expresses its appreciation to the High Court of the Canton of Zürich and
4 the Federal Office of Justice for its courtesy and assistance in this matter and states that this Court
5 shall be ready and willing to assist the courts of Switzerland in a similar manner when required.
6 This Court is also willing to reimburse (through the Parties) the competent judicial authorities of
7 Switzerland for any costs incurred in executing this request for judicial assistance. This Court
8 extends to the competent judicial authorities of Switzerland the assurances of its highest
9 consideration.
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11 This Letter of Request is signed and sealed by Order of the Court made on the date set forth
12 below:
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15 **SO ORDERED.**

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17 DATED: _____

18 HON. DONNA M. RYU
United States Magistrate Judge
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